

SS HB 331 -- UTILITIES

This bill changes the laws regarding utilities.

PUBLIC UTILITY RIGHT-OF-WAY PERMITS

The management costs or rights-of-way management costs cannot include payment by a public utility right-of-way user for attorney fees and costs in connection with issuing, processing, or verifying a right-of-way permit or other applications or agreements.

If a political subdivision fails to act on an application for a right-of-way permit within 31 days, the application must be deemed approved.

The bill allows a public utility that has had its right-of-way permit revoked by a political subdivision to bring an action in any court of competent jurisdiction if it believes that the political subdivision has violated specified provisions of law. The court must rule on any petition for review in an expedited manner by moving the petition to the head of the docket. Nothing can deny the authority of its right to a hearing before the court.

A political subdivision cannot require a public utility that has legally been granted access to the political subdivision's right-of-way prior to August 28, 2011, to enter into an agreement or obtain a permit for general access to or the right to remain in the right-of-way of the subdivision.

UNIFORM WIRELESS COMMUNICATIONS INFRASTRUCTURE DEPLOYMENT ACT

The Uniform Wireless Communications Infrastructure Deployment Act is established to encourage and streamline the deployment of broadband facilities and to help ensure that robust wireless communication services are available throughout Missouri. The bill:

(1) Prohibits an authority as specified in the bill with jurisdiction over wireless communications infrastructure from taking actions that could result in a non-uniform market for wireless service in Missouri. The prohibition does not include state courts having jurisdiction over land use, planning, or zoning decisions made by an authority. The prohibitions include:

(a) Requiring an applicant to submit information about or evaluate an applicant's business decisions with respect to its designed service, customer demand for service, or quality of its service to or from a particular area or site;

(b) Evaluating an application based on the availability of other potential locations for the placement of wireless support structures or wireless facilities including, without limitation, the option to add wireless infrastructure to existing facilities instead of constructing a new wireless support structure or for substantial modifications of a support structure or vice versa. However, an applicant for a new wireless support structure may be required to state in its application that it conducted an analysis of adding on to existing wireless towers within the same search ring defined by the applicant;

(c) Dictating the type of wireless facilities, infrastructure, or technology to be used by the applicant by requiring an applicant to construct a distributed antenna system in lieu of constructing a new wireless support structure;

(d) Requiring the removal of existing wireless support structures or wireless facilities, wherever located, as a condition for approval of an application;

(e) Imposing environmental testing, sampling, or monitoring requirements or other compliance measures regarding radio frequency emissions on wireless facilities that are categorically excluded under the Federal Communications Commission's rules for radio frequency emissions under 47 CFR 1.1307(b)(1) or other applicable federal law;

(f) Establishing or enforcing regulations or procedures for RF signal strength or the adequacy of service quality;

(g) Rejecting an application in conformance with 47 U.S.C. Section 332(c)(7)(b)(4), in whole or in part, based on perceived or alleged environmental effects of radio frequency emissions;

(h) Imposing any restrictions with respect to objects in navigable airspace that are greater than or in conflict with the restrictions imposed by the Federal Aviation Administration;

(i) Prohibiting the placement of emergency power systems that comply with federal and state environmental requirements;

(j) Charging an application fee, consulting fee, or other fee associated with the submission, review, processing, and approval of an application that is not required for similar types of commercial development within the authority's jurisdiction. Fees imposed by an authority for or directly by a third-party entity providing review or technical consultation to the authority must be based on actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of an application. The total

charges and fees cannot exceed \$500 for a collocation application or \$1,500 for an application for a new wireless support structure or for a substantial modification of a wireless support structure except when mutually agreeable to the applicant and the authority. An authority or any third-party entity cannot include within its charges any travel expenses incurred in a third-party's review of an application and an applicant cannot be required to pay or reimburse an authority for consultation or other third-party fees based on a contingency or result-based arrangement;

(k) Imposing surety requirements, including bonds, escrow deposits, letters of credit, or any other type of financial surety, to ensure that abandoned or unused facilities can be removed unless the authority imposes similar requirements on other permits for other types of commercial development or land uses;

(l) Conditioning the approval of an application on the applicant's agreement to provide space on or near the wireless support structure for authority or local governmental services at less than the market rate for space or to provide other services via the structure or facilities at less than the market rate for the services;

(m) Limiting the duration of the approval of an application;

(n) Discriminating or creating a preference on the basis of the ownership, including ownership by the authority, of any property, structure, or tower when establishing rules or procedures for siting wireless facilities or for evaluating applications;

(o) Imposing any requirements or obligations regarding the presentation or appearance of facilities including, but not limited to, those relating to the kind or type of materials used and those relating to arranging, screening, or landscaping of facilities if the requirements or obligations are unreasonable;

(p) Imposing any requirements that an applicant purchase, subscribe to, use, or employ facilities, networks, or services owned, provided, or operated by an authority, in whole or in part, or by any entity in which an authority has a competitive, economic, financial, governance, or other interest;

(q) Conditioning the approval of an application on, or otherwise requiring, the applicant's agreement to indemnify or insure the authority in connection with the authority's exercise of its police power-based regulations; or

(r) Conditioning or requiring the approval of an application based on the applicant's agreement to permit any wireless facilities

provided or operated, in whole or in part, by an authority or by any entity in which an authority has a competitive, economic, financial, governance, or other interest to be placed at or connected to the applicant's wireless support structure;

(2) Allows an authority to continue to exercise zoning, land use, planning, and permitting authority within its territorial boundaries with regard to the siting of new wireless support structures and an application for substantial modifications of wireless support structures subject to specified provisions of state law and subject to federal law. The authority must review, within 120 days of receiving an application to construct a new wireless support structure or within the additional time as may be mutually agreed to by an applicant and an authority, the application as to its conformity with applicable local zoning regulations and advise the applicant in writing of its final decision to approve or disapprove the application. An applicant that applies for a substantial modification must include a copy of a lease, letter of authorization, or other agreement from the property owner evidencing his or her right to pursue the application and must comply with applicable local ordinances concerning land use and the appropriate permitting processes. The authority must, within 120 days of receiving an application to construct a new wireless support structure or within 90 days of receiving an application for a substantial modification of wireless support structures, review the application as to its conformity with applicable local zoning regulations and advise the applicant in writing of its final decision to approve or deny the application. Procedures for extending these deadlines and fixing deficiencies are also specified in the bill. A party aggrieved by the final action of an authority or its inaction may bring an action in any court of competent jurisdiction;

(3) Requires an application for additions to or replacement of wireless facilities to be reviewed for compliance with specified applicable building permit requirements, national codes, and recognized industry standards. An application must include a copy of a lease, letter of authorization, or other agreement from the property owner evidencing the applicant's right to pursue the application. The authority must, within 45 days, review the application as to its conformity with applicable building permit requirements and consistency with the provisions of the act and advise the applicant in writing of its final decision to approve or deny the application. Procedures for expediting or extending the deadline and for fixing deficiencies are also specified in the bill;

(4) Specifies that the provisions of the bill do not authorize an authority, except when acting solely in its capacity as a utility,

to mandate, require, or regulate the placement, modification, or attachment of any new wireless facility on new, existing, or replacement poles owned or operated by a utility, to expand the power of an authority to regulate any utility, or to restrict any utility's rights or authority or negate any utility's agreement regarding requested access to or the rates and terms applicable to the placement of any wireless facility on new, existing, or replacement poles, structures, or existing structures owned or operated by a utility;

(5) Prohibits an authority from instituting a moratorium on the permitting, construction, or issuance of approval of new wireless support structures, substantial modifications of wireless support structures, or attachments to existing facilities of wireless communication infrastructure if the moratorium exceeds six months and if the legislative act establishing it fails to state reasonable grounds and good cause for the moratorium. A moratorium must not affect a pending application;

(6) Prohibits an authority from charging a wireless service provider or wireless infrastructure provider any rental, license, or other fee to locate a wireless support structure on an authority's property in excess of the current market rates for rental or use of similarly situated property. An authority may not offer a lease or contract to use public lands to locate a wireless support structure on an authority's property that is less than 15 years in duration unless the applicant agrees to accept a lease or contract of less than that time. A process for the resolution of any dispute over the market value lease payment using appraisers is also specified in the bill; and

(7) Specifies that these provisions cannot provide an applicant for a wireless facility permit the power of eminent domain or the right to compel any private or public property owner, the Department of Conservation, or the Department of Natural Resources to lease or sell property for the construction of a new wireless support structure or to locate or cause the joining or expansion of a wireless facility on an existing structure or wireless support structure.

UTILITY CROSSINGS THROUGH A RAILROAD RIGHT-OF-WAY

The bill establishes procedures for utilities regulated by the Missouri Public Service Commission; rural electric cooperatives; municipally owned utilities; providers of telecommunications service, wireless communications, or other communications-related service; and specified nonprofit electrical corporations in third classification counties to construct a facility as specified in the bill over, under, or across a railroad right-of-way.

After the land management company receives a copy of the notice from the utility, it must send a complete copy of the notice to the railroad or railroad corporation within two business days. A utility cannot commence a crossing until the railroad or railroad corporation has approved the crossing. The railroad or railroad corporation must have 30 days from the receipt of the notice to review and approve or reject the proposed crossing. It can reject a proposed crossing only if special circumstances exist. The utility may propose an amended crossing proposal if a proposed crossing is rejected, and the railroad or railroad corporation will have an additional 30 days to review and approve or reject the amended proposal. The railroad or railroad corporation must not unreasonably withhold approval. The utility must be deemed to have authorization to commence the crossing activity upon the approval and the payment of the fee and any other specified required payments. The land management company and the utility must maintain and repair its own property within the railroad right-of-way and bear responsibility for its own acts and omissions, except that the utility must be responsible for any bodily injury or property damage. The railroad or railroad corporation may require the utility and the land management company to obtain reasonable amounts of comprehensive general liability insurance and railroad protective liability insurance coverage for a crossing and to provide proof of the coverage. A utility must have immediate access to a crossing for repair and maintenance of existing facilities in case of an immediate threat to life and upon notification to the applicable railroad or railroad corporation. The engineering specifications must comply with the clearance requirements as established by the National Electrical Safety Code, the American Railway Engineering and Maintenance of Way Association, and the standards of the applicable railroad or railroad corporation that are in effect and apply to conditions at a particular crossing.

Unless otherwise agreed by the parties and subject to Section 389.588, RSMo, a utility that locates its facilities within the railroad right-of-way for a crossing, other than a crossing along a state highway or other public road, must pay the land management company a one-time standard crossing fee of \$1,500 for each crossing plus the costs associated with modifications to existing insurance contracts of the land management company. The standard crossing fee must be in lieu of any license, permit, application, plan review, or any other fees or charges to reimburse the land management company for the direct expenses incurred by the company as a result of the crossing. The utility must also reimburse the land management company for any actual flagging expenses associated with a crossing in addition to the standard crossing fee.

The provisions of the bill cannot prevent a land management company and a utility from otherwise negotiating the terms and conditions applicable to a crossing or the resolution of any disputes relating to the crossing so long as they do not interfere with the rights of a railroad or railroad corporation and cannot impair the authority of a utility to secure crossing rights by easement through the exercise of the power of eminent domain.

If a utility and land management company cannot agree that special circumstances exist, the dispute must be submitted to binding arbitration in accordance with the commercial rules of arbitration in the American Arbitration Association. However, either party may also pursue relief in a court of proper jurisdiction, and the land management company and utility is entitled to reasonable attorney fees if they prevail. If a dispute involves only compensation associated with a crossing, the utility may proceed with the installation of a crossing while the arbitration is pending.

These provisions cannot override or nullify the condemnation laws of this state or confer the power of eminent domain power on any entity not granted the power prior to August 28, 2013.

The provisions of the bill apply to a crossing commenced after August 28, 2013, and to a crossing commenced prior to August 28, 2013, if the agreement concerning the crossing has expired or is terminated.

CIVIL IMMUNITY REGARDING EMERGENCY INFORMATION REQUESTS

The bill also establishes immunity from liability from a cause of action for a provider of communications-related service for providing information, facilities, or assistance to a law enforcement official or agency in response to a request under specified emergency situations and specifies that a provider can establish protocols by which it can voluntarily disclose call location information.

PRICE CAP WAIVERS

The bill allows specified alternative local exchange telecommunications companies providing basic local telecommunications services that are currently regulated by the Missouri Public Service Commission and have maximum price caps to seek a waiver from the commission for the price cap regulations in the same manner as a waiver for other rules and regulations.

TELECOMMUNICATIONS REGULATIONS

The bill changes the laws regarding telecommunications regulations.

The bill:

- (1) Allows a telecommunications company to include any, all, or none of its rates, terms, or conditions for any, all, or none of its retail services in a tariff filed with the commission;
- (2) Exempts specified telecommunications companies that hold a state charter or are licensed to do business under Chapter 392 from most rules and regulations relating to the retail services under Chapter 386, except to the extent that a company elects to remain subject to certain commission orders, rules, or statutes by notifying the commission. A telecommunications company must collect the universal service fund surcharge from its end users in the same competitively neutral manner as other telecommunications and interconnected voice over Internet protocol service providers; report the intrastate telecommunications service revenues necessary to calculate the commission assessment, universal service fund surcharge, and telecommunications programs under Section 209.255; and comply with the emergency location requirements;
- (3) Exempts broadband and other Internet protocol-enabled services from the regulations under Chapters 386 and 392 except that interconnected voice over Internet protocol services must continue to be subject to the fees and registration requirements enforced by the commission under Section 392.550;
- (4) Specifies that the commission retains jurisdiction over all matters delegated to it by federal law and the bill does not modify these duties in any way; and
- (5) Allows a telecommunications company to register with the commission and obtain certification using the same process as used for interconnected voice over Internet protocol service as specified in Section 392.550.3.